

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Jointly Administered)

**AMENDED² NOTICE OF AGENDA FOR HEARING SCHEDULED FOR
OCTOBER 9, 2024, AT 1:00 P.M. (EASTERN TIME)**

This proceeding will be conducted in-person in courtroom 7. All counsel and witnesses are expected to attend unless permitted to appear remotely via Zoom. Please refer to Judge Horan's Chambers Procedures and the Court's website (<http://www.deb.uscourts.gov/ecourt-appearances>) for information on who may participate remotely, the method of allowed participation (video or audio), Judge Horan's expectations of remote participants, and the advance registration requirements.

Registration is required by 4:00 p.m. (ET) the business day before the hearing unless otherwise noticed using the eCourt Appearances tool available on the Court's website.

I. RESOLVED MATTERS

1. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (II) Granting Related Relief ([D.I. 6](#), filed 9/10/24).

Objection Deadline: September 25, 2024, at 4:00 p.m. (ET). Extended to October 1, 2024, at 4:00 p.m. (ET) for the Official Committee of Unsecured Creditors (the "Committee").

¹ The debtors and debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: <https://www.veritaglobal.net/Fulcrum>.

² Amended items in **bold**.

Responses Received:

- A. Informal comments from the Committee.
- B. Informal comments from the United States Trustee (the “U.S. Trustee”).

Related Documents:

- A. Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 9](#), filed 9/11/24);
- B. Interim Order (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (II) Granting Related Relief ([D.I. 48](#), entered 9/12/24);
- C. Omnibus Notice of First Day Motions and Bidding Procedures Motion and Final Hearing Thereon ([D.I. 54](#), filed 9/12/24);
- D. Notice of Errata Regarding Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 95](#), filed 9/26/24);
- E. Notice of Rescheduled Hearing ([D.I. 102](#), filed 10/1/24); and
- F. Final Order (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (II) Granting Related Relief ([D.I. 129](#), entered 10/7/24).**

Status: An order has been entered. No hearing is necessary.

- 2. Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue to Operate Their Cash Management System and (II) Granting Related Relief ([D.I. 7](#), filed 9/10/24).

Objection Deadline: September 25, 2024, at 4:00 p.m. (ET). Extended to October 1, 2024, at 4:00 p.m. (ET) for the Committee.

Responses Received:

- A. Informal comments from the Committee.
- B. Informal comments from the U.S. Trustee.

Related Documents:

- A. Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 9](#), filed 9/11/24);

- B. Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts and (II) Granting Related Relief ([D.I. 51](#), entered 9/12/24);
- C. Omnibus Notice of First Day Motions and Bidding Procedures Motion and Final Hearing Thereon ([D.I. 54](#), filed 9/12/24);
- D. Notice of Errata Regarding Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 95](#), filed 9/26/24);
- E. Notice of Rescheduled Hearing ([D.I. 102](#), filed 10/1/24); and
- F. Final Order (I) Authorizing the Debtors to Continue to Operate their Cash Management System and (II) Granting Related Relief ([D.I. 130](#), entered 10/7/24).**

Status: An order has been entered. No hearing is necessary.

- 3. Debtors' Motion for Entry of an Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief ([D.I. 8](#), filed 9/10/24).

Objection Deadline: September 25, 2024, at 4:00 p.m. (ET). Extended to October 1, 2024, at 4:00 p.m. (ET) for the Committee.

Responses Received:

- A. Informal comments from the Committee.
- B. Informal comments from the U.S. Trustee.

Related Documents:

- A. Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 9](#), filed 9/11/24);
- B. Interim Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief ([D.I. 46](#), entered 9/12/24);

- C. Omnibus Notice of First Day Motions and Bidding Procedures Motion and Final Hearing Thereon ([D.I. 54](#), filed 9/12/24);
- D. Notice of Errata Regarding Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 95](#), filed 9/26/24);
- E. Notice of Rescheduled Hearing ([D.I. 102](#), filed 10/1/24); and
- F. Final Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief ([D.I. 131](#), entered 10/7/24).**

Status: An order has been entered. No hearing is necessary.

- 4. Debtors' Motion for Interim and Final Orders (I) Authorizing Debtor to (A) Continue Insurance Programs and Surety Bond Program, (B) Pay All Obligations With Respect Thereto, and (II) Granting Related Relief ([D.I. 10](#), filed 9/10/24).

Objection Deadline: September 25, 2024, at 4:00 p.m. (ET). Extended to October 1, 2024, at 4:00 p.m. (ET) for the Committee.

Responses Received:

- A. Informal comments from the Committee.
- B. Informal comments from the U.S. Trustee.

Related Document:

- A. Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 9](#), filed 9/11/24);
- B. Interim Order Authorizing Debtors to (A) Continue Insurance Policies and Agreements Relating Thereto, (B) Honor Certain Prepetition Obligations In Respect Thereof, and (C) Continue to Honor Insurance Premium Financing Obligations ([D.I. 47](#), entered 9/12/24);
- C. Omnibus Notice of First Day Motions and Bidding Procedures Motion and Final Hearing Thereon ([D.I. 54](#), filed 9/12/24);
- D. Notice of Errata Regarding Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 95](#), filed 9/26/24);

E. Notice of Rescheduled Hearing ([D.I. 102](#), filed 10/1/24); and

F. Final Order (I) Authorizing the Debtors to (A) Continue Insurance Programs and Surety Bond Program, (B) Pay all Obligations with Respect thereto, and (II) Granting Related Relief ([D.I. 132](#), entered 10/7/24).

Status: An order has been entered. No hearing is necessary.

II. MATTERS GOING FORWARD

5. Debtors' Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Bondholders; (III) Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief ([D.I. 11](#), filed 9/11/24).

Objection Deadline: September 25, 2024, at 4:00 p.m. (ET). Extended to October 2, 2024, at 4:00 p.m. (ET) for the Committee. Extended to October 4, 2024, at 11:59 p.m. (ET) for the Trustee.

Responses Received:

- A. Objection of the Official Committee of Unsecured Creditors to Debtors' Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Bondholders; (III) Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief ([D.I. 103](#), filed 10/2/24) (the "DIP Motion").
- B. Informal Comments from the Committee.
- C. Informal comments from the U.S. Trustee.

Related Documents:

- A. Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 9](#), filed 9/11/24);
- B. Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Bondholders; (III)

Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief ([D.I. 52](#), entered 9/12/24);

- C. Omnibus Notice of First Day Motions and Bidding Procedures Motion and Final Hearing Thereon ([D.I. 54](#), filed 9/12/24);
- D. Notice of Errata Regarding Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 95](#), filed 9/26/24);
- E. Notice of Rescheduled Hearing ([D.I. 102](#), filed 10/1/24);
- F. Declaration of Joshua Nahas in Support of the Official Committee of Unsecured Creditors' DIP Financing Objection and Bid Procedures Objection ([D.I. 114](#), filed 10/7/24).
- G. Notice of Revised Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 And 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Bondholders; (III) Authorizing Use of Cash Collateral; and (IV) Granting Related Relief ([D.I. 124](#), filed 10/7/24);**
- H. Reply in Support of Debtors' Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection To Certain Prepetition Bondholders; (III) Authorizing Use Of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief ([D.I. 127](#), filed 10/7/24); and**
- I. Debtors' Motion for Leave to File Late Replies to the Objections of the Official Committee of Unsecured Creditors, ThermoChem Recovery International, Inc., and Johnson Matthey Davy Technologies Ltd. to the Debtors' DIP Motion and Bidding Procedures Motion ([D.I. 125](#), filed 10/7/24).**

Witnesses and Exhibits:

- A. Debtors' Witness and Exhibit List for October 9, 2024 Hearing (D.I. [117](#), filed 10/7/24)**
- B. Official Committee of Unsecured Creditors Witness and Exhibit List for October 9, 2024 Hearing (D.I. [128](#), filed 10/7/24)**

Status: This matter is going forward.

6. Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets; (B) Approving the Debtors' Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief ([D.I. 12](#), filed 9/11/24) (the "Bidding Procedures Motion").

Objection Deadline: September 25, 2024, at 4:00 p.m. (ET). Extended to October 2, 2024, at 4:00 p.m. (ET) for the Committee.

Responses Received:

- A. Objection of Thermochem Recovery International, Inc. to the Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief, and Request for Adequate Protection of Tri's Proprietary Interests ([D.I. 91](#), filed 9/25/24);
- B. Limited Objection of Johnson Matthey Davy Technologies Ltd. to Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief ([D.I. 92](#), filed 9/25/24); and

- C. Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors Assets; (B) Approving the Debtors Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors Assets Free and Clear Of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief ([D.I. 104](#), filed 10/2/24).

Related Documents:

- A. Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 9](#), filed 9/11/24);
- B. Omnibus Notice of First Day Motions and Bidding Procedures Motion and Final Hearing Thereon ([D.I. 54](#), filed 9/12/24);
- C. Notice of Errata Regarding Declaration of Mark Smith, Restructuring Advisor to Fulcrum Bioenergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions ([D.I. 95](#), filed 9/26/24);
- D. Notice of Rescheduled Hearing ([D.I. 102](#), filed 10/1/24);
- E. Declaration of Joshua Nahas in Support of the Official Committee of Unsecured Creditors' DIP Financing Objection and Bid Procedures Objection ([D.I. 114](#), filed 10/7/24).
- F. Notice of Revised Final Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 And 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief ([D.I. 123](#), filed 10/7/24); and**

- G. Reply of the Debtors in Support of Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 And 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 AND 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption or Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connections Therewith; and (F) Granting Related Relief; (II) An Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief ([D.I. 126](#), filed 10/7/24).**
- H. Debtors' Motion for Leave to File Late Replies to the Objections of the Official Committee of Unsecured Creditors, ThermoChem Recovery International, Inc., and Johnson Matthey Davy Technologies Ltd. to the Debtors' DIP Motion and Bidding Procedures Motion ([D.I. 125](#), filed 10/7/24).**

Witnesses and Exhibits:

- A. ThermoChem Recovery International, Inc.'s Witness and Exhibit List for Hearing Scheduled for October 9, 2024, at 1:00 P.M. (Prevailing Eastern Time) (D.I. [116](#), filed 10/7/24)**
- B. Debtors' Witness and Exhibit List for October 9, 2024 Hearing (D.I. [117](#), filed 10/7/24)**
- C. Official Committee of Unsecured Creditors Witness and Exhibit List for October 9, 2024 Hearing (D.I. [128](#), filed 10/7/24)**

Status: This matter is going forward.

- 7. Debtors' Motion for Leave to File Late Replies to the Objections of the Official Committee of Unsecured Creditors, ThermoChem Recovery International, Inc., and Johnson Matthey Davy Technologies Ltd. to the Debtors' DIP Motion and Bidding Procedures Motion ([D.I. 125](#), filed 10/7/24).**

[Remainder of Page Intentionally Left Blank]

Dated: October 7, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Avery Jue Meng

Robert J. Dehney, Sr. (No. 3578)

Curtis S. Miller (No. 4583)

Daniel B. Butz (No. 4227)

Clint M. Carlisle (No. 7313)

Avery Jue Meng (No. 7238)

1201 N. Market Street, 16th Floor

P.O. Box 1347

Wilmington, Delaware 19899-1347

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: rdehney@morrisnichols.com

cmiller@morrisnichols.com

dbutz@morrisnichols.com

ccarlisle@morrisnichols.com

ameng@morrisnichols.com

*Proposed Counsel for the Debtors and Debtors in
Possession*